UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE GREENEVILLE

SCOTTY RAY DAVIS,)		
Plaintiff)		
V.)	No.	2:16-CV-143
NANCY BERRYHILL,)		
Acting Commissioner of Social Security,)		
Defendant.)		

REPORT AND RECOMMENDATION

This matter has been referred to the United States Magistrate Judge under the standing orders of the Court for a report and recommendation regarding the Motion [Doc. 26] for an award of attorney fees to the plaintiff under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A). The parties entered into a stipulation that reduced the requested attorney's fees by agreement.

The plaintiff's case was recently remanded by the District Judge to the defendant for further administrative review [Doc. 25]. While this fact makes plaintiff entitled to fees under the EAJA, attorney fees under the Social Security Act itself can only be awarded if the plaintiff is ultimately awarded benefits. Should the plaintiff be awarded past due benefits, counsel will be required to refund whichever fee is smaller; either the fee under the EAJA, or the fee under the Social Security Act.

In order to be entitled to an award of attorney fees and expenses under the Equal Access to Justice Act, all of the conditions set forth in 28 U.S.C. § 2412(d)(1)(A), (B)

must be met. These are that:

(1) the party seeking the fees is the "prevailing party" in a civil action brought

by or against the U.S.,

(2) an application for such fees, including an itemized justification for the

amount requested, is timely filed within 30 days of final judgment in the

action,

(3) the position of the government is not substantially justified and

(4) no special circumstances make an award unjust.

The undersigned Magistrate Judge finds that all of these factors are met in this

case. An affidavit of the hours expended by plaintiff's counsel and the costs and

expenses incurred has been submitted. The undersigned finds them to be reasonable. No

request was made for an award of costs.

It is recommended that, based on the stipulation of the parties, the plaintiff's

Motion be GRANTED, and that plaintiff be awarded EAJA fees in the amount of

\$4,254.50.1 No other costs or expenses are ordered.

Respectfully recommended:

s/Clifton L. Corker

United States Magistrate Judge

¹Any objections to this report and recommendation must be filed within fourteen (14) days of its service or further appeal will be waived. <u>Thomas v. Arn</u>, 474 U.S. 140 (1985); <u>United States v. Walters</u>, 638 F.2d 947-950 (6th Cir. 1981); 28 U.S.C. § 636(b)(1)(B) and (C).

2